

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

ROBERT HAIN,

Plaintiff,

vs.

BRIAN WILLIAMS, SR., et al.,

Defendants.

Case No. 2:10-CV-00153-JCM-(LRL)

**ORDER**

Defendant Williams has removed this action to this court. Pursuant to 28 U.S.C. § 1915A, the court has reviewed plaintiff's civil rights complaint pursuant to 42 U.S.C. § 1983. Plaintiff alleges that he has a cavity in one of his wisdom teeth, which is causing him pain, but that defendants have refused to approve filling the cavity. Plaintiff has stated a claim that defendants have been deliberately indifferent to a serious dental need.

Plaintiff has sued all defendants in their official capacities. Plaintiff has sued three defendants, Williams, Burson, and Cox, only in their official capacities; Plaintiff has sued defendants Dressler and Bannister in their individual and official capacities. While individual-capacity claims seek to impose personal liability upon a government official for actions performed under color of state law, official-capacity claims generally represent another way of suing "an entity of which an officer is an agent," Kentucky v. Graham, 473 U.S. 159, 165 (1984) (quoting Monell v. Department of Social Services of City of New York, 436 U.S. 658, 690 n.55 (1978)), namely, the Nevada Department of Corrections. Section 1983 states in pertinent part:

1 Every person who, under color of any statute, ordinance, regulation, custom, or  
2 usage, of any State or Territory or the District of Columbia, subjects, or causes to be  
3 subjected, any citizen of the United States or other person within the jurisdiction  
4 thereof to the deprivation of any rights, privileges, or immunities secured by the  
Constitution and laws, shall be liable to the party injured in an action at law, suit in  
equity, or other proper proceeding for redress . . . (emphasis added)

5 The State of Nevada and any governmental entity that is considered an “arm of the State” for  
6 Eleventh Amendment purposes are not “persons” within section 1983’s meaning of the term. Will  
7 v. Michigan Dept. of State Police, 491 U.S. 58, 70-71 (1989); Doe v. Lawrence Livermore Nat.  
8 Laboratory, 131 F.3d 836 (9th Cir. 1997). Because the Nevada Department of Corrections is one of  
9 the “arms of the State,” it is not a “person” for the purposes of section 1983. Consequently, plaintiff  
10 cannot recover monetary damages against any defendant in his official capacity, but he can recover  
11 monetary damages from defendants Dressler and Bannister in their individual capacities. The court  
12 will not dismiss any defendant in his official capacity, because plaintiff is seeking injunctive relief,  
13 which is a permissible official-capacity claim. See Ex Parte Young, 209 U.S. 123 (1908).

14 IT IS FURTHER ORDERED that the Attorney General shall advise the court within  
15 twenty (20) days from the date that this order is entered whether service of process for defendants  
16 Burson, Cox, Dressler, and Bannister is accepted. Within thirty (30) days of the date of the notice  
17 of acceptance of service or the notice of non-acceptance of service, the Attorney General shall file  
18 and serve an answer or other response to the complaint on behalf of the defendants who have been  
19 served. If service cannot be accepted for any of the named defendants, then plaintiff will need to  
20 file a motion identifying the unserved defendant(s), requesting the issuance of a summons, and  
21 specifying a full name and address for said defendant(s).

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1 IT IS FURTHER ORDERED that henceforth, plaintiff shall serve upon defendants  
2 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading,  
3 motion or other document submitted for consideration by the court. Plaintiff shall include with the  
4 original paper submitted for filing a certificate stating the date that a true and correct copy of the  
5 document was mailed to the defendants or counsel for the defendants. The court may disregard any  
6 paper received by a district judge or magistrate judge which has not been filed with the clerk, and  
7 any paper received by a district judge, magistrate judge or the clerk which fails to include a  
8 certificate of service.

9 DATED: December 29, 2010.

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12 JAMES C. MAHAN  
13 United States District Judge  
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